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\*N.Y. BAR ONLY

January 7, 1986

BY HAND

Anthony J. McMahon, Chief  
Bureau of Industrial Site Evaluation  
Division of Waste Management  
New Jersey Department of Environmental  
Protection  
428 East State Street  
Trenton, New Jersey 08625

Re: Hexcel Corporation, Lodi, New Jersey

Dear Tony:

Enclosed please find three (3) copies of the General Information Submission for the sale of Hexcel's Lodi, New Jersey facility. Also enclosed is the certified check in the amount of \$2,600.00 for the ECRA filing fee.

During the past several years the division which operates the Lodi facility has become steadily less profitable. In order to keep the facility from closing, Hexcel has been seeking a purchaser for the division's real property and assets in New Jersey and Ohio. Unfortunately, the resultant uncertainty has been detrimental to both employee morale and customer confidence. Only sale of the business to new management committed to the continued operation of the plant will solve the employee morale and sales problems.

The acquiring corporation is owned by some of the present facility management and their relatives. Due to the tenuous viability of the business, the sooner the transaction can be consummated, the more likely that the business will be able to succeed and the jobs retained.

SDMS Document



88645

January 7, 1986

In order to achieve a rapid transfer of the facility, a January 29, 1986 closing has been scheduled. It is the hope of all involved that the transaction can be consummated at that time. It is recognized, however, that all necessary business and finance arrangements may not be completed by that time and thus the contract allows for adjournment of the closing until February 28, 1986. Nevertheless, all parties are working as quickly as possible to meet the January 29, 1986 deadline.

The normal timing of the ECRA process is too long to comply with the timeline of this transaction. Accordingly, we respectfully request the Department enter an Administrative Consent Order with Hexcel Corporation which would allow consummation of the transaction prior to completion of all the requirements under the statute.

We, of course, do not make this request without substantial reason. Both Hexcel and this office fully recognize that ECRA matters are best completed in the normal course. Unfortunately, the steady erosion of the profits and sales of this operation have cut at its viability and the group which has been assembled to purchase this facility may well represent the only entity capable of turning the business around.

Hexcel has retained environmental consultants to assist it in preparing for the ECRA process. A purchaser has been found and Hexcel is ready to move forward as rapidly as possible. Accordingly, the Site Evaluation Submission should be filed within the next few days.

I am the designated agent to work with the Department on this ECRA submission and am anxious to, and have been directed by Hexcel to, assist your office as much as possible to ensure smooth processing for the January 29, 1986 closing. Accordingly, I am ready to assist with the annotation of the standard form Administrative Consent Order and the drafting of the required attendant documentation. After you have had the chance to review this request, please call me so that we may move forward as quickly as possible.

Thank you for your usual attention and cooperation.

Very truly yours,



Edward A. Hogan

EAH/smf  
Encs.

886450002

**INSTRUCTIONS FOR COMPLETING ECRA-1**  
**GENERAL INFORMATION SUBMISSION (GIS) APPLICATION**

THIS FORM MUST BE COMPLETED BY SOMEONE IN A POSITION OF RESPONSIBILITY WHO IS FAMILIAR WITH THE ACTIVITIES OF THE INDUSTRIAL ESTABLISHMENT. SUBMIT THE ORIGINAL PLUS TWO COPIES OF THIS COMPLETED FORM AND ANY ATTACHMENTS. ONLY ONE SALES AGREEMENT IS REQUIRED.

1. A. Enter the name of the Industrial Establishment whose presence triggers this Environmental Cleanup Responsibility Act review. Indicate the "street address" of the facility, the "city or town" for mailing purposes, and the incorporated "municipality" in which the premises are physically located, if different from mailing address. **NOTE:** *If more than one Industrial Establishment is involved (multiple tenancy) a separate application is required for each.*  
  
B. Enter the tax lot and block numbers of the property occupied or used by the Industrial Establishment or which is under contract of sale. If multiple blocks are involved, list them on a separate page and indicate "attached" in this item.  
  
C. Provide the primary SIC number of the Industrial Establishment as determined by definitions developed by the Federal Office of Management and Budget in the Standard Industrial Classification Manual. Such numbers consist of four digits. The first two numbers identify the major industrial group while the second pair of digits represent a subgroup within that major category. For example, Major Group 33 is the Primary Metal Industries, while Subgroup 3351 is associated with the Rolling, Drawing, and Extruding of Copper.  
  
D. Indicate the current owner of the property upon which the Industrial Establishment is doing business.  
  
E. Indicate the current operator of the Industrial Establishment.  
  
F. Indicate the current owner of the Industrial Establishment (business), the sale, transfer, sale of property, or closure of which has triggered this application. Note that a transfer of operations to another location represents a closure at the property in question.  
  
G., H., & I. Self-explanatory.
2. Identify all known previous owners and/or operators. Provide company names, current addresses, dates of ownership or operation and a general description of each operation conducted prior to the current business.
- 3., 4., & 5. Self-explanatory.
6. Designate a single individual to be the primary contact with this Department for all matters relating to this ECRA review. Provide an address and telephone number at which contact may be made during normal business hours. This designee will be the addressee on all formal correspondence. All telephone calls concerning this case will be directed to the designee.
7. A. & B. Self-explanatory.  
  
C. Enter the Identification Number assigned to the Industrial Establishment by the U.S. Environmental Protection Agency for generation, treatment, storage or disposal operations under the provisions of the Resource Conservation and Recovery Act (RCRA).  
  
D. Identify any and all other permits held from environmental agencies at any level of government, including, but not limited to, the Nuclear Regulatory Commission; the Federal Insecticide, Fungicide, and Rodenticide Act; the Toxic Substance Control Act; the N.J. Bureau of Radiation Protection; the N.J. Bureau of Pesticide Control Operations, etc. Additional pages should be appended as necessary. Do not include local building permits.
8. Self-explanatory.

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Send three (3) sets of this completed form and any attachments (only 1 sales agreement is required) to:

**N.J. Department of Environmental Protection  
Division of Waste Management  
Bureau of Industrial Site Evaluation  
CN 028  
Trenton, New Jersey 08625**

**Attn: ECRA Initial Notice**

Should you encounter any problems in completing this form, we recommend that you discuss the matter with a representative from the Bureau before submitting insufficient data which may cause processing delays and a possible postponement of your transaction.

Please call (609) 633-7141 between the hours of 8:30 a.m. and 4:30 p.m. to request assistance.

**886450004**

ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT (ECRA)

INITIAL NOTICE

GENERAL INFORMATION SUBMISSION (GIS)

This is the first part of a two-part application form. This information must be submitted within 5 days following public release of a decision to close operations or the signing of a sales agreement or option to purchase involving an Industrial Establishment as defined in N.J.S.A. 13:1K-6, the Environmental Cleanup Responsibility Act.

SUBMIT THE ORIGINAL PLUS TWO COPIES OF THIS COMPLETED FORM AND ANY ATTACHMENTS.

Please refer to instructions and N.J.A.C. 7:1-3.7(d) before filling out this form. Answer all questions. Please print or type.

Date: January 7, 1986

I. A. Industrial Establishment:

Name: HEXCEL INDUSTRIAL CHEMICALS GROUP\* Telephone No.: (201) 472-6800  
An operating subdivision of Hexcel Corporation.  
Street Address: 205 Main Street

City or Town: Lodi State: New Jersey Zip Code: 07644

Municipality: Borough of Lodi County: Bergen

B. Tax Lot Number: See Attachment "A" Tax Block Number: \_\_\_\_\_

C. Standard Industrial Classification (SIC) Number: 2833

D. Current Owner (Property):

Name: HEXCEL CORPORATION Telephone No.: (415) 956-3333  
Firm: N/A

Street Address: 650 California Street

Municipality: San Francisco State: California Zip Code: 94108

E. Current Operator of Industrial Establishment:

Name: HEXCEL INDUSTRIAL CHEMICALS GROUP\* Telephone No.: (201) 472-6800  
An operating subdivision of Hexcel Corporation  
Firm: N/A

Street Address: 205 Main Street

Municipality: Lodi State: New Jersey Zip Code: 07644

F. Current Owner (Business, if different from operator):

Name: Same as current operator. Telephone No.: \_\_\_\_\_

Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

Municipality: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

\*See Attachment "F".

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FOR DEP USE ONLY

Date Rec'd. \_\_\_\_\_ Notice No. \_\_\_\_\_

G. If the Industrial Establishment discharges sanitary and/or industrial wastes to a publicly-owned treatment plant, provide the name and address of that facility. Treatment Works

Name: Passaic Valley Sewage Commission Telephone No.: (201) 344-1800

Street Address: 600 Wilson Avenue

Municipality: Newark State: NJ Zip Code: 07105

Is a septic system used (or used previously) at the site? ☐ Yes ☒ No

H. Has an ECRA application been filed for this Industrial Establishment or location subsequent to January 1, 1984? ☐ Yes ☒ No If so, when? \_\_\_\_\_

For what reason \_\_\_\_\_

Final disposition \_\_\_\_\_

I. How is this Industrial Establishment heated? (gas, oil, electricity) Gas and oil.

2. List previous activities at the location(s) involved (attach additional sheets if necessary). In addition to describing the activities, list the business name(s), current address(es) and dates of ownership/operation of the previous activity(ies), if known.

A. Specialty Chemical Manufacturing, Fine Organics, Inc., no current address (Fine Organics facility acquired by merger in 1973). Fine Organics owned and operated site 1944-1973.

B. Manufacture of dyestuffs for the textile industry, United Piece Dye Works, current address unknown, early 1900's to 1944.

3. If the transaction initiating an ECRA review is the cessation of operations at this location, fill in the date of public release of the decision to close the facility and enclose a copy of the public announcement. Is a cessation of operations involved? ☐ Yes ☒ No

Date of the public release of the decision \_\_\_\_\_

Is the public release enclosed? ☐ Yes ☐ No

If you checked "no", state the reason(s) \_\_\_\_\_

4. If the transaction initiating an ECRA review is an agreement of sale or option to purchase, fill in the date of the execution of that instrument plus provide a copy of the document \_\_\_\_\_

A. Is a sale involved? ☒ Yes ☐ No

B. Date of Agreement December 31, 1985

C. Is a copy of the agreement of sale or option to purchase attached? ☒ Yes ☐ No  
See Attachment "B"

If you checked "no", state the reason(s) \_\_\_\_\_

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- D. Clearly describe the transaction in terms of the action which initiates the ECRA review (e.g., sale of real estate only, sale of real estate and business, cessation of operations only, etc.):

Sale of real estate and business assets including equipment, inventory, business good will, and know how involving both the Lodi facility and equipment at a Hexcel facility in Lancaster, Ohio.

- E. List other parties (purchasers) to the transaction:

NAME	STREET ADDRESS AND MUNICIPALITY	PHONE NO.
FOA Corporation c/o William J. Reidy	450 Franklin Avenue Wyckoff, New Jersey 07481	(201) 891-5892

5. Actual date proposed for closure of operations or transfer of title: January 29, 1986

6. Authorized agent designated to work with the Department:

Name: Edward Hogan Telephone No.: (201) 992-8700  
 Firm: Lowenstein, Sandler et al Attorneys at Law  
 Street Address: 65 Livingston Avenue  
 Municipality: Roseland State: NJ Zip Code: 07068

7. List all federal and state environmental permits applied for and received at this facility (attach additional sheets if necessary).

Check here if no permits are involved:                     

A. New Jersey Bureau of Air Pollution Control

PERMIT NO.	CERTIFICATE NO.	DATE OF APPROVAL OR DENIAL	REASON FOR DENIAL (if applicable)	EXPIRATION DATE
<u>073089</u>	<u>                    </u>	<u>10/08/85</u>	<u>N/A</u>	<u>1/5/86</u>
<u>073043</u>	<u>                    </u>	<u>11/27/85</u>	<u>N/A</u>	<u>2/24/86</u>
<u>069079</u>	<u>                    </u>	<u>8/24/85</u>	<u>N/A</u>	<u>8/18/90</u>
<u>063142</u>	<u>                    </u>	<u>6/19/83</u>	<u>N/A</u>	<u>3/14/89</u>
<u>073042</u>	<u>                    </u>	<u>9/24/85</u>	<u>N/A</u>	<u>9/24/90</u>
<u>018701</u>	<u>                    </u>	<u>6/19/75</u>	<u>N/A</u>	<u>6/19/90</u>

Also see Attachment "E"

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## B. New Jersey Pollutant Discharge Elimination System

NUMBER	DISCHARGE ACTIVITY	DATE ISSUED OR DENIED	EXPIRATION DATE	BODY OF WATER DISCHARGED INTO
NONE				

## C. United States Environmental Protection Agency (EPA) Identification Number and copy of the most recent generator Annual Report prepared pursuant to the New Jersey Hazardous Waste Regulations.

ID # NJD010963924Is a copy of the Annual Report attached? ☒ Yes ☐ No See Attachment "C"

## D. All other federal, state, local governmental permits.

AGENCY ISSUING PERMIT	PERMIT NUMBER	DATE OF APPROVAL OR DENIAL	EXPIRATION DATE
Passaic Valley Sewage Commission Treatment Works	17402370	1/26/81	1/26/86
Boro of Lodi, New Jersey Hazardous Chemical Control	398	1/2/86	12/31/86

3. If applicable, identify all administrative orders, temporary or permanent injunctions, civil administrative penalties, or criminal actions concerning the environment issued against the facility, its owners, or managers during the last ten years.

Check here if no enforcement actions are involved \_\_\_\_\_

A. Date of Action 11/29/84Section of Law or Statute violated NJAC 7:26-9.4(g) 6i,ii,iii,iv,7,8;7:26-9.6(f), 3,4; and 7:26-9.7(i) 2Type of Enforcement Action Administrative Violation Notice and Penalty Settlement Offer,  
HW00574Description of the Violation Various hazardous waste handling operational violations, e.g., training record violations, job title and description omissions, failure to submit Contingency and Emergency Procedure Plan to local agencies.How was the violation resolved? Penalty assessment of \$1,400 paid. Violations corrected.

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B. Date of Action 9/29/84

Section of Law or Statute violated NJ Title 23:5-28

Type of Enforcement Action Notification of Violation and Offer of Settlement

Description of the Violation Notice stated that spills and leaking drums were observed close to the east bank of the Saddle River during a state inspection.

How was the violation resolved? Violation corrected. Hexcel paid \$750.00 on 12/13/84 as an agreed compromise penalty with NJDEP.

(Add additional pages, if necessary)

See Attachment "D"

I hereby certify that the information furnished on this application and any attachments is true. I am aware that false swearing is a crime in this State. I am cognizant that providing false information is a violation under ECRA and that I may be personally liable for penalties up to \$25,000 per day.

  
Signature

Fred G. Beyerlein

Name (Print or Type)

Vice President/General Manager

Title

January 7, 1986

Date

\*To the best of my knowledge and belief after diligent inquiry of individuals knowledgeable of and responsible for the operations of the Industrial Establishment.

886450009

ATTACHMENT "F"

ITEM 1.

The HEXCEL CORPORATION operates the Lodi facility as part of its Chemical Products Division, the operating entity located at 205 Main Street known as the Industrial Chemicals Group. The Industrial Chemicals Group has also been known as the "Specialty Chemicals" division of Hexcel Corporation and "Fine Organics Inc."

Attachment "B"

C O N F I D E N T I A L

Note: Dollar amounts deleted.

886450011

Rec 31/85

Executed  
Original

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made as of the 31st day of December, 1985 between FOA CORPORATION, a Delaware corporation ("Buyer"); and HEXCEL CORPORATION, a Delaware corporation ("Seller").

WHEREAS, Seller owns and operates an operating unit known as the Industrial Chemicals Group (the "Industrial Chemicals Group"); and

WHEREAS, Seller desires to sell and Buyer desires to purchase certain assets of Seller on the terms and subject to the conditions set forth in this Agreement;

NOW, THEREFORE, the parties agree as follows:

**1. SALE AND PURCHASE OF ASSETS**

(a) Assets. In reliance on the representations, warranties and covenants contained herein and subject to the terms and conditions hereof, Seller shall sell, convey, transfer and assign to Buyer and Buyer shall buy from Seller, effective as of December 31, 1985 (the "Effective Date"), all the assets owned by Seller on the Effective Date and utilized primarily in connection with or as a part of the Industrial Chemicals Group business of Seller and its Industrial Chemicals Group (as hereinafter defined) as a going concern, subject to the Assumed Liabilities (as hereinafter defined), and excluding the Excluded Assets (as hereinafter defined) (the "Assets"). The Industrial Chemicals Group business of Seller, carried on without the Excluded Assets as of the Effective Date, is hereinafter referred to as the "Business." The Assets specifically include, without limitation, the exclusive right to use the name of the Industrial Chemicals Group or a similar name as a corporate name, trademarks, service marks, trade names, brand names, copyrights, patents and patent applications and interests thereunder, inventions, processes, know-how, interests in real estate (including a certain facility at which the Business is operated at Lodi, New Jersey and all other interests), machinery, equipment, plant, facilities, tanks, drums, and other chemical equipment, inventories, supplies, prepaid assets, deferred charges and other similar assets, tools, fixtures, franchises, all books, records and other data of Seller relating to the Assets, the Business, or employees and operations of the Business, all rights of Seller under any contracts and agreements, customer lists, goodwill and all other property and rights of every kind and

nature, tangible or intangible, owned by Seller on the Effective Date, whether or not specifically referred to in this Agreement, and whether or not carried on the books of Seller as an asset, and including all assets set forth in Exhibit A hereto, "Industrial Chemicals Group Assets". The Excluded Assets are, and the term "Excluded Assets" as used herein means, (i) all cash on hand and in banks, and cash equivalents; and (ii) all customer receivables; and (iii) only those assets specifically listed in attached Exhibit A under the heading "Excluded Assets".

(b) Purchase Price. The aggregate purchase price ("Purchase Price") for the Assets shall be [REDACTED] Dollars (\$[REDACTED]) subject to adjustment as hereinafter provided, and the assumption of the Assumed Liabilities, as hereinafter defined. The Purchase Price will be payable at the Closing on the Closing Date (as hereinafter defined) as follows:

(i) the Promissory Note of Buyer in the amount of \$[REDACTED], payable to Seller, in the form attached hereto as Exhibit B, and secured by a first mortgage on the real estate of the Business located in Lodi, New Jersey, such mortgage to be in substantially the form attached hereto as Exhibit C;

(ii) the assumption by Buyer of certain specified accrued liabilities in the amount of \$[REDACTED], in respect of \$[REDACTED] in Administrative Consent Order cleanup, as hereinafter defined, and \$[REDACTED] in Assumed Liabilities, as hereinafter defined, and subject to adjustment as hereinafter provided; and

(iii) cash, or a certified or official bank check payable to Seller, in the amount of \$[REDACTED], subject to adjustment as hereinafter provided.

(c) Assumed Liabilities. On the Closing Date Buyer will assume and agree to pay, perform and discharge, all the Assumed Liabilities. The term Assumed Liabilities, as used herein, means those liabilities of Seller designated on the December 1985 Financial Statement (as hereinafter defined) as financial debt associated with the accounts payable, debt associated with the fixed assets which remain unpaid on the Closing Date and those accounts payable as of December 31, 1985 which remained unpaid as of the Closing Date and which liabilities of Seller are listed on attached Exhibit T. Except as specifically set forth herein, all liabilities of Seller shall remain such, and shall not be assumed by Buyer.

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(d) Excluded Liabilities. The term "Excluded Liabilities" as used herein shall include and mean all liabilities of Seller not specifically assumed by Buyer, including, without limitation, (i) any and all liabilities, obligations and expenses, incident to or arising out of the Excluded Assets, (ii) any expenses, obligations or liabilities incident to or arising out of this Agreement and the transactions contemplated herein, (iii) without limiting the generality of the foregoing, any employment contracts, union contracts, health and welfare plans, life or hospitalization insurance plans, pension, profit sharing or other similar benefit plans, deferred incentive compensation agreements or plans, lease agreements, loan agreements or guarantees and (iv) any expenses, obligations or liabilities, for the accrual or payment of any taxes whatsoever, and any and all other liabilities, obligations and expenses not expressly agreed to be assumed by this Agreement. All Excluded Liabilities shall continue to be the sole obligation of Seller and no expenses included in Excluded Liabilities shall be paid out of the Assets.

(e) Assignments. On the Closing Date Seller will execute and deliver a bill of sale in the form of attached Exhibit D, assignments of trademarks in a form suitable for recordation in the Patent and Trademark Office and sufficient to convey such trademarks and all such other conveyances, deeds, assignments, bills of sale and other documents or instruments of transfer as legal counsel to Buyer may reasonably deem necessary to vest in Buyer good and marketable title and all right, title and interest of Seller in and to the Assets. In addition, Seller, shall from time to time, whether at or after the Closing Date, execute such forms or documents necessary or appropriate to effect or record the transfers contemplated hereby.

(f) Certain Equipment. Buyer and Seller acknowledge that among the Assets are certain machinery and equipment listed in Exhibit A hereto which currently are, and at the Closing Date shall be, located at Seller's Lancaster, Ohio facility. With respect thereto, Buyer shall have the following options (unless otherwise agreed in writing), the choice among which shall be exercised in writing by Buyer and shall be effected not later than three (3) months after the Closing Date:

(i) To remove all or part of such machinery and equipment, at Buyer's expense, and to transport it to the Lodi, New Jersey facility for use there by Buyer; or

(ii) To remove all or part of such machinery and equipment, at Buyer's expense, and to dispose of it with any income therefrom to belong to Buyer.

*and such qualification  
extends to  
the Business,*

In the event Buyer shall fail to so exercise such a choice, then such assets located in Lancaster, Ohio shall be deemed to be owned by Seller, and Buyer shall have no rights therein.

(g) Lease of Certain Space and Equipment. Seller shall have the option, to be exercised in writing prior to or on the Closing Date, to lease from Buyer for a maximum of three (3) months from the closing date, at a rate of \$~~10,000~~ per month, payable on the first day of each month, office space, furniture, fixtures, and clerical support, currently used at the Lodi, New Jersey facility by Seller's personnel connected with Seller's operations other than the Business.

2. CLOSING. The closing of the sale and purchase of the Assets (the "Closing") shall take place on January 29, 1985 or on such other date not later than February 28, 1985 as may be agreed to by the Buyer and Seller. A

3. SELLER'S, REPRESENTATIONS, WARRANTIES AND COVENANTS

Seller represents and warrants to and covenants with Buyer that:

(a) Corporate Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and it has all requisite corporate power and authority to own, lease and operate the Assets and to carry on the Business as now being conducted. Attached as Exhibit F is a correct and complete schedule listing all the jurisdictions where the Seller is qualified to do business, ~~in respect of the Business.~~

(b) No Subsidiaries. Seller does not in connection with the operation of the Business or the ownership or operation of the Assets, to an extent which affects the Business or the Assets in excess of \$20,000 per year, in the aggregate, own any shares or any other interest, beneficially or of record, in any other corporation or in any partnership, unincorporated association, trust or other entity.

(c) Financial Statements. So far as is known to Seller, the unaudited profit and loss statement of Seller with respect to the Business as of November 30, 1985, as prepared by Seller, (the profit and loss statement as of November 30, 1985 being herein called the "Interim Financial Statement"), attached as Exhibit G, fairly presents the financial position of the Business as of the date thereof in accordance with the Seller's historic accounting principles set forth therein, consistently applied, and the profit

and loss statement of Seller with respect to the Business as of December 31, 1985, which profit and loss statement will be prepared by Seller and its accountants, (the December 31, 1985 profit and loss statement being herein called the "1985 Financial Statement") shall be delivered to Buyer as soon as practicable, but not later than January 13, 1986, and attached hereto as Exhibit H, and shall fairly present the financial position of the Business in accordance with the Seller's historic accounting principles set forth therein, consistently applied, as of the date thereof. So far as is known to Seller the balance sheets with respect to the Business which shall be included in the Interim Financial Statement and the 1985 Financial Statement, respectively, fairly present and shall fairly present, respectively, the financial position of the Business consistently applied, in accordance with historic accounting policies as of the date thereof.

(d) Undisclosed Liabilities. So far as they know, Seller as of November 30, 1985 had and as of December 31, 1985 will have no liabilities or obligations of a nature customarily reflected in a corporate balance sheet or the notes thereto prepared in accordance with Seller's current practice, consistently applied, whether accrued, absolute, contingent or otherwise and whether due or to become due, or arising out of transactions entered into, or any state of facts existing prior thereto, except to the extent reflected or reserved against in the Interim Financial Statement or the 1985 Financial Statement, as appropriate; and Seller does not know and as of the Closing will not know or have reasonable grounds to know of any basis for the assertion against Seller of any liability or obligation with respect to the Business or the Assets which, if asserted, would be required to be reflected or reserved against in the Interim Financial Statement or 1985 Financial Statement in conformity with Seller's current practice, consistently applied.

(e) [omitted]

(f) Litigation, Etc.. Except as disclosed on attached Exhibit J: (i) there is no (i) legal, administrative, arbitration or other suit, action or proceeding, (ii) change in the zoning or



building ordinances or (iii) governmental investigation pending, asserted, or to the knowledge of Seller's officers, threatened or in prospect, with respect to the Assets, the Business or the transactions contemplated by this Agreement; (2) Seller has substantially complied with all, and is not in default in any material respect under, or in violation of any laws, ordinances, requirements, regulations or orders (including without limitation those relating to consumer financing, usury, trade regulation, zoning, fire and building codes, water or air pollution, hazardous wastes or other environmental matters, occupational safety and health, pensions and other employee benefits, labor relations or equal employment practices) applicable to the conduct of the Business and ownership of the Assets; (3) Seller is not subject to any charter or other corporate restriction or any judgment, order, writ, injunction, decree, rule, regulation, or, to the knowledge of Seller's officers, code or ordinance, which materially and adversely affects, or might reasonably be expected materially and adversely to affect, the Business, the operation or continued operation thereof, or the Assets or the ownership or continued ownership thereof; (4) Seller has not with respect to the Business experienced any labor disputes or threatened labor disputes, or engaged in any negotiations with labor unions involving terms or conditions of labor, or had any such negotiations proposed to it by employees or employee representatives, or entered into any labor contracts.

(g) Title to Assets. Except as disclosed on attached Exhibit K (and except for existing utility, governmental, and obvious public easements that have not materially affected the value of or the use of the Assets by Seller), Seller has good and marketable title to all of the Assets (except property sold or otherwise disposed of since December 31, 1985 in the ordinary course of business and consistent with past practice), free and clear of all mortgages, liens, pledges, charges or encumbrances. All such encumbrances, whether or not disclosed on Exhibit K shall be removed and satisfied by Seller at its expense at or prior to the Closing.

(h) Condition of Property. To the best knowledge of Seller's officers all buildings, improvements, furniture, fixtures, machinery and equipment owned or leased by Seller relating to the Business and all of the Assets to the extent required to be maintained by Seller and, to the knowledge of Seller's officers, to the extent required to be maintained by others, have been maintained in accordance with sound business practices and are in adequate condition and repair for the operation of the Business.

(i) Inventories. The inventories of Seller shown on the Interim Financial Statement, and the 1985 Financial Statement and the inventories accumulated by Seller subsequent to the date

thereof with respect to the Business include no material amounts thereof which are obsolete or of a quality or quantity not usable or salable in the normal course of the Business, which have not been written down on its books of account to realizable market value or with respect to which adequate reserves have not been provided.

(j) [omitted]

(k) Trademarks. Seller owns directly or indirectly, or otherwise has a legal right to make use of, all patents, trademarks, service marks, trade names, brand names or copyrights or applications therefor used by them or the use of which is necessary or customary for the Business as now conducted without conflict with the rights of others; and Exhibit L is a correct and complete schedule listing all such patents, trademarks, service marks, trade names, brand names, copyrights and applications therefor (hereinafter the "Intangible Rights"); Seller has not received any notice with respect to any alleged infringement by it or unlawful use by it of any patent, trademark, service mark, trade name, brand name, copyright, process, invention or formula or other intangible property right owned by others; and Seller's officers have no knowledge of any conflict, or potential conflict, with the rights of others in connection with the Intangible Rights, and the same are subject to no liens, encumbrances, claims or charges or to any outstanding order, decree, judgment or stipulation. Notwithstanding anything to the contrary in this subparagraph (k), Buyer shall have no rights with respect to, and Seller shall not be deemed to have made any representation, warranty or covenant with respect to, the trademark "Hexcel", or the logo associated therewith or any subsidiary right therein.

(l) Insurance. Seller maintains insurance from financially sound and reputable insurers against the kinds of risks usually insured against by businesses engaged in the same or similar businesses as the Business and in amounts customarily maintained by such businesses. Attached as Exhibit M is a correct and complete schedule listing all property, liability, life, worker's compensation, health and welfare, disability, hospitalization and other insurance policies of Seller with respect to the Business, and all such insurance is in full force and effect.

(m) Contracts. Attached as Exhibit N is a correct and complete schedule listing all written contracts, agreements,

leases, commitments and engagements, and all material oral agreements known to Seller's officers, of Seller relating to the Assets or the Business (except (i) those which are terminable, pursuant to the terms thereof and without penalty, within 30 days after the Closing Date, and (ii) those which are included in Excluded Liabilities and (iii) those as to which Seller's liability, contingent or otherwise, at the date hereof is less than \$1,000) including, without limitation, all supply and service contracts to which Seller is a party as vendor or vendee, contracts for the purchase or lease of capital equipment, employment contracts, union contracts, health and welfare plans, life or hospitalization insurance plans, pension, profit sharing or other similar benefit plans, deferred incentive compensation agreements or plans, lease agreements, loan agreements and guarantees relating to the Business.

(n) No Defaults. Except as specifically set forth in Exhibit N, all contracts, agreements, leases, commitments and engagements listed in Exhibit N, and all other contracts, agreements, leases, commitments and engagements relating to the Assets or the Business to which Seller is a party, or to which any of the Assets may be subject, are valid and in full force and effect, and no material breach or default (after lapse of time, notice or both) by Seller exists with respect thereto, and none of Seller's officers has knowledge of any material breach or default (after lapse of time, notice or both) by any other party thereto.

(o) Agreement with Stockholders, Etc.. Except as set forth in Exhibit N, Seller has no contract, agreement, lease, commitment or engagement of any kind relative to the Assets or the Business with any stockholder, officer, director or employee, or immediate family member thereof, of Seller.

*action to the effect of*  
(p) Taxes. Buyer shall not be responsible for any tax liability which relates to the operation of the Business or the Assets, by Seller; and Seller shall indemnify and hold harmless Buyer from any such tax liability or costs or expenses associated therewith.

(q) Adverse Changes. Except as set forth on attached Exhibit O, since November 30, 1985 and through December 31, 1985 there has not been, with respect to the Assets or the Business; and Seller agrees not to intentionally cause, whether by action or inaction, at any time from the date hereof to the Closing Date:

(i) Condition. Any material change in the condition (financial or otherwise) of Seller or the Assets, Assumed Liabilities, the Business or earnings thereof taken as a whole, other than changes in the ordinary course of business and consistent with past practice, none of which, singly or in the aggregate, has been or could be materially adverse to the Business;

(ii) Damage. Any damage, destruction or loss (whether or not covered by insurance) materially and adversely affecting the Business or the Assets taken as a whole;

(iii) Labor Disputes. Any labor dispute affecting, or threatened labor dispute which might materially and adversely affect, the Assets or the Business; any negotiations with labor unions or proposal of such negotiations affecting the Assets or the Business; or any effort to organize a labor union to represent any or all employees of Seller in the Business;

(iv) Liens. Any mortgage, pledge, lien or other encumbrance or security interest (other than such encumbrances, if any, as are not substantial in amount and do not interfere with the present or proposed use of the property subject thereto or affected thereby, or otherwise impair the Business or its operations) to which the Assets have been subjected, or assumed by Seller, with respect to the Assets except for such mortgages, liens, encumbrances and security interests as may have been created in the ordinary course of business and consistent with past practice, and are disclosed in Exhibit K;

(v) Liabilities Incurred. Any indebtedness, liability or obligation (whether absolute, accrued, contingent or otherwise) incurred, or other transaction (except as permitted or expressly disclosed by this Agreement) engaged in, with respect to the Business or the Assets by Seller other than in the ordinary course of business and consistent with past practice;

(vi) Dispositions of Assets. Any sale, transfer or other disposition of any tangible Asset of Seller, or cancellation of any debt or claim, except in the ordinary course of business and consistent with past practice, or any sale, assignment, transfer or other disposition of any of its patents, trademarks, service marks, trade names, brand names, copyrights, licenses or other intangible assets;

(vii) Surrender of Rights. Any amendment, termination or waiver of any right belonging to Seller in connection with the Business or the Assets other than in the ordinary course of business and consistent with past practice;

(viii) Salary Increases. Any salary or wage increase in connection with the Business other than normal merit and cost-of-living increases consistent with Seller's general prevailing practices to any officer, partner, employee or agent of Seller relating to the Business; or any bonus, incentive compensation, deferred compensation, profit sharing, retirement, pension, group insurance, death benefit or other fringe benefit plan, trust agree-

ment, or arrangement or any employment or consulting agreement relating to the Business entered into or materially amended or altered;

(ix) Capital Expenditures. Any capital expenditures, capital additions or capital improvements with respect to the Business or the Assets made, or committed to be made, by Seller other than in the ordinary course of business and consistent with past practice;

(x) Books and Records. Any failure to maintain the books, accounts and records of Seller with respect to the Business or the Assets in the usual, regular and ordinary manner and in accordance with good business practice and generally accepted accounting principles;

(xi) Agreements to Change. Any agreement by Seller to do any of the foregoing;

(xii) Potential Defaults. Any action taken or omitted to be taken by Seller which would cause (after lapse of time, notice or both) the breach, default, acceleration, amendment, termination or waiver of any material right, contract, commitment or other obligation with respect to the Business or the Assets; or

(xiii) Other Events. Any other event or condition of any character which in any one case or in the aggregate has materially adversely affected, or any event or condition known, or which reasonably should have been known, to the officers of Seller which it is reasonable to expect will, in any one case or in the aggregate, materially adversely affect in the future, the Assets or Assumed Liabilities or the condition (financial or otherwise), earnings or prospects of the Business.

(r) Prohibited Payments. Neither Seller nor, to the knowledge of any officer of Seller, any employee of Seller, has made any payment of funds of Seller prohibited by law, and no funds of Seller have been set aside to be used for any payment prohibited by law, and all such payments have been prohibited by Seller.

(s) [omitted]

(t) Corporate Authority. As of the Closing Date all corporate action required to be taken by Seller for the adoption and approval of this Agreement and for the transfer of the Assets to Buyer in exchange for the consideration set forth hereunder, and for the consummation of the transactions contemplated hereunder, will have been duly and validly taken as evidenced by a certificate of the Secretary of the Seller to such effect to be furnished to Buyer by the Seller at the Closing. This Agreement is the valid and binding obligation of Seller, enforceable in accordance with its terms. Except as described in Exhibit P, neither the execution and delivery by Seller of this Agreement nor the consummation of the transactions contemplated hereby nor compliance by Seller with any of the provisions hereof will (i) conflict with or result in a breach of any provision of Seller's Certificate of Incorporation or By-laws, (ii) result in a default (after lapse of time, notice or both) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture or other debt instrument of Seller, (iii) result in a default (after lapse of time, notice or both) under or cancellation or termination of, or accelerate the performance required by, any other contract, agreement, commitment or engagement (including, without limitation, those listed on Exhibit P, with the exceptions, if any, noted on such Exhibit) to which Seller is a party or by which it or any of its respective properties or assets may be bound, or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or any of their properties or assets. Except as contemplated herein with respect to the State of New Jersey Department of Environmental Protection Administrative Consent Order, no consent or approval by any governmental authority is required in connection with the execution and delivery by Seller of this Agreement or the consummation by Seller of the transactions contemplated hereby.

(u) Employees. Exhibit Q is a complete and correct list of each employee of the Company's Business, a description of such employee's duties, the initial date of employment, the monthly rate of and the method of determining such employee's compensation, and the amount of such employee's compensation (including bonus, if any) for the month ended December 31, 1985.

(v) Customers. Except as listed on Exhibit R, none of the customers of the Seller are affiliated with the Seller nor do any of them currently account for, or during the last twelve months have accounted for, more than 5% of the aggregate sales of the Seller.

(w) Material Misstatements. No representation or warranty by Seller in this Agreement and no schedule, certificate or other instrument or exhibit identified or referred to herein, or furnished or to be furnished to Buyer pursuant hereto, contains or will contain any untrue statement of a material fact or omits or

will omit any material fact necessary in order to make the statements contained therein, taken together, not misleading.

**4. BUYER'S REPRESENTATIONS AND WARRANTIES.**

Buyer represents and warrants to Seller that:

(a) It is a duly organized and existing corporation in good standing under the laws of the State of Delaware.

(b) All corporate action required to be taken by Buyer for the adoption and approval of this Agreement and for the purchase of the Assets by Buyer in exchange for the consideration set forth hereunder has been duly and validly taken, as evidenced by certified resolutions to be furnished to Seller at the Closing. This Agreement is the valid and binding obligation of Buyer, enforceable in accordance with its terms. Neither the execution and delivery by Buyer of this Agreement nor the consummation of the transactions contemplated hereby nor compliance by Buyer with any of the provisions hereof will (i) conflict with or result in a breach of any provision of Buyer's Certificate of Incorporation or By-laws, (ii) result in a default (after lapse of time, notice or both) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture or other debt instrument of Buyer, (iii) result in a default (after lapse of time, notice or both) under or cancellation or termination of, or accelerate the performance required by, any other contract, agreement, lease, commitment or engagement to which Buyer is a party or by which it or any of its respective properties or assets may be bound, or (iv) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer or any of its properties or assets. No consent or approval by any governmental authority is required in connection with the execution and delivery by Buyer of this Agreement or the consummation by Buyer of the transactions contemplated hereby.

**5. CONDUCT OF SELLER'S BUSINESS.**

Seller agrees that from the date hereof to the Closing Date to the extent that such events are within Seller's control, and to the extent that the Business or the Assets are affected, and except to the extent that Buyer shall otherwise consent by an instrument in writing signed on behalf of Buyer by a duly authorized officer:

(a) Operation of Business. Seller will operate the Business substantially as presently operated and only in the ordinary course and consistent with past practice and to the extent of and consistent with such operation it will use its best efforts to

preserve intact its present business organization and preserve its relationships with persons having business dealings with it.

(b) Maintenance of Properties. Seller will maintain all of the properties of the Business in customary repair, order and condition, reasonable wear and use and damage by fire or unavoidable casualty excepted, and take all steps reasonably necessary to maintain its intangible assets, including without limitation its patents, trademarks, service marks, trade names, brand names, copyrights and any pending applications therefor.

(c) Liens. Seller will not create or assume any mortgage, pledge, lien or other encumbrance or security interest on the Assets.

(d) Indebtedness. Seller will not incur any indebtedness, liability or obligation, with respect to the Assets or the Business, other than current indebtedness incurred in the ordinary course of business and consistent with past practice.

(e) Sale of Assets. Seller will not sell, transfer or otherwise dispose of any of the Assets, except in the ordinary course of business and consistent with past practice, or sell, assign, transfer or otherwise dispose of any of its intangible property included in the Assets or the Business, including without limitation, patents, trademarks, service marks, trade names, brand names, copyrights, licenses or other intangible Assets.

(f) Waiver of Rights. Seller will not amend, terminate or waive any material right in respect of the Assets or the Business except in the ordinary course of business and consistent with past practice.

(g) Employee Benefits. Seller will not (i) grant any salary or wage increase to any officer, or, except in the ordinary course of business and consistent with past practices, to any other employee or agent of the Business or (ii) with respect to the Business enter into or amend or alter materially any bonus, incentive compensation, deferred compensation, profit sharing, retirement, pension, group insurance, death benefit or other fringe benefit plan, trust agreement, or arrangement or any employment or consulting agreement, except as may be required to comply with the Employee Retirement Income Security Act of 1974 or any applicable federal, state or local statute, regulation or ordinance.

(h) Capital Expenditures. Seller will not make or commit to make any capital expenditures, capital additions or capital improvements with respect to the Business other than in the ordinary course of business and consistent with past practice or, with



respect to capital expenditures, capital additions or capital contributions which are in the ordinary course of business and consistent with past practice, which exceed \$10,000 with respect to any single expenditure, addition or improvement or \$20,000 with respect to all such expenditures, additions and improvements.

(i) Books and Records. Seller will maintain the books, accounts and records of the Business in the usual, regular and ordinary manner and in accordance with good business practice and generally accepted accounting principles consistently applied.

(j) Taxes. Seller will pay all ad valorem and other taxes upon the Assets and the Business as they become due.

(k) Amendments to Agreements. Seller will not enter into or assume, or alter or amend, any contract, agreement, lease, commitment or engagement, with respect to the Assets or the Business, except in the ordinary course of business and consistent with past practice or as contemplated by this Agreement.

(l) Performance of Agreements. Seller will not do any act, or omit to do any act, which will cause a material breach of any contract, commitment or obligation of Seller with respect to the Business.

(m) Notice of Adverse Changes. Seller will promptly advise Buyer in writing of any material adverse change in the Assets or the financial position, earnings or prospects of the Business.

(n) Compliance with Laws. Seller will duly comply in all material respects with all laws applicable to it and to the conduct of the Business.

(o) Insurance. Seller will not cancel or decrease any of the insurance referred to in subparagraph 3 (1) or listed in Exhibit M, or permit any of such insurance to lapse or terminate.

## **6. 1985 FINANCIAL STATEMENT.**

Seller will furnish to Buyer as soon as practical, but in any event not later than January 13, 1986, the 1985 Financial Statement, such statement to consist of a balance sheet as of that date and a statement of profit and loss, as described in section 3(c). The balance sheet and the statement of profit and loss for the 1985 calendar and fiscal year shall, so far as Seller knows, fairly present the financial position of the Business as of December 31, 1985. Buyer and Buyer's auditors shall be entitled to review such financial statement, and to participate in the physical inventory therefor to the extent appropriate. The December 1985 Financial Statement shall be

attached to this Agreement on or before the Closing Date as Exhibit H and all representations and warranties appearing in paragraph 3 with respect to Exhibits G ~~(and D)~~ will apply with equal force and effect to Exhibit H. The balance sheet as of December 31, 1985 and the notes thereto shall include all of the Assets and all of the assets of the Business customarily shown on a corporate balance sheet and shall, by reference to this Agreement and its defined terms, clearly identify in the notes thereto the Assets, the Excluded Assets, the Assumed Liabilities and the Excluded Liabilities.

7. INVESTIGATION.

After the execution and delivery of this Agreement, Buyer, through its employees, agents and representatives, may make or cause to be made such other and additional investigation of the Assets and the Business as Buyer deems necessary or advisable, but no investigation by Buyer, whether before or after the execution and delivery of this Agreement, shall affect the representations and warranties of Seller hereunder or Buyer's right to indemnification as provided in paragraph 15. Seller agrees to cooperate with and to permit Buyer and its employees, agents and representatives to have full access to its premises on reasonable notice and to all its books and records and to furnish to Buyer such financial and operating data and other information with respect to the Business and the Assets as Buyer shall from time to time reasonably request (including, without limitation, workpapers and other records of the Business that may be in the possession of or created by Seller's accountants and auditors). If the Closing does not occur, Buyer will deliver to Seller originals and copies of documents, work papers and other materials obtained or reproduced in connection with such investigation, whether so obtained before or after the execution hereof, will not use any information so obtained, will not disclose or divulge such information to any other person and will keep any information so obtained confidential; provided that Buyer shall not be obligated to treat as confidential any information with respect to Seller which is or becomes publicly available or readily ascertainable from public sources, or which was known to it at the time of disclosure by Seller or which is rightfully received by it from a third party.

8. FURTHER AGREEMENTS.

(a) At or prior to the Closing Date Seller will use its best efforts to obtain all third party consents necessary to assign the contracts, agreements, leases, commitments and engagements listed on Exhibit H relating to the Assets and the Business.

(b) Buyer agrees to cooperate with Seller in allowing Seller access to records and documents associated with the Business

or the Assets in connection with any accounting or tax audits of Seller, or other reasonable requirement of Seller.

(c) Non-Competition. Seller covenants and agrees that from the Closing Date and for a period of five (5) years hereafter Seller will not, directly or indirectly, own, manage, operate, join, control or participate in or be connected with as a partner, stockholder, subsidiary or otherwise, any business, individual, partnership, firm or corporation which is directly or indirectly in competition with the Business. Nothing in this Agreement is intended, or shall be construed, to prevent the Seller from investing in the stock or other securities listed on a national securities exchange or actively traded on the over-the-counter market of any corporation which is at the time engaged wholly or partly in the business of manufacturing, purchasing, selling, or dealing in any product now manufactured, purchased, or sold by the Business or any firm, partnership, or corporation which shall succeed to all or a substantial part of the Business or in any business which is, directly or indirectly, at the time, in competition with the Business, provided that Seller and its affiliates shall not, directly or indirectly, hold, beneficially or otherwise, in the aggregate, more than five percent (5%) of any issue of such stock or other securities of any one (1) such corporation.

(d) Proprietary Information. Seller covenants and agrees that from and after the Closing Date Seller will not at any time, directly or indirectly, use or permit the use of any trade secrets, customers' lists or other confidential information of, or relating to, the Business in connection with any activity or business, and will not divulge such trade secrets, customers' lists, and confidential information to any person, firm, or corporation whatsoever, except as may be authorized in writing by Buyer or pursuant to a court order or similar governmental process. Seller agrees that the customers (the identity of which are confidential) and the group of skilled and trained sales and technical employees of the Business have been developed over a considerable period of time, at great expense, and constitute an essential and valuable asset. Seller acknowledges that it has knowledge of, and access to and acquaintance with such customers and Seller therefore agrees that from the date hereof and for a period of five years hereafter, it will not:

(i) disclose to anyone, except as may be authorized by the Buyer, the identities of or any facts relating to the customers of the Business nor, directly or indirectly, solicit for any person, firm or corporation other than Buyer any customer of Buyer for the Business or the sale to them of products or services which are then being offered, or could be offered in the ordinary course of business, by the Business, or

(ii) directly or indirectly recruit or solicit for employment or consulting by any person, firm or corporation other than Buyer any sales or technical person who then is, an employee of or consultant to the Business.

(e) Buyer agrees to use its best efforts to obtain the product liability insurance referred to in paragraph 10(h) hereof.

(f) For so long as the Promissory Note referred to in paragraph 1(b) (i) hereof shall be outstanding, Buyer agrees to use its best efforts to cause an individual designated by Seller (which individual shall be reasonably acceptable to Buyer) to be elected as a director of Buyer.

#### **9. ADJUSTMENT TO PURCHASE PRICE.**

The Purchase Price set forth in subparagraph 1(b) shall be adjusted in accordance with the terms of paragraph 13 and as otherwise provided for herein.

#### **10. CONDITIONS TO BUYER'S OBLIGATIONS.**

The obligation of Buyer to consummate the acquisition contemplated by this Agreement is subject to the satisfaction, on or before the Closing Date, of the following conditions (unless waived by Buyer in writing):

(a) Representations, Warranties and Covenants. Examination by Buyer shall not have disclosed any material inaccuracy in the representations and warranties of Seller contained in this Agreement; such representations and warranties shall be true and correct at and as of the Closing, except for representations and warranties specifically relating to a time or times other than the Closing Date (which shall be true and correct at such time or times) and except for changes contemplated and permitted by this Agreement, with the same force and effect as if made at and as of the Closing Date; Seller shall have substantially performed all obligations and complied with all covenants required to be performed or to be complied with by them under this Agreement prior to the Closing; there shall have been no materially adverse change in the condition, financial or otherwise, of the Business from that set forth in the Interim Financial Statement; and Buyer shall have received a certificate signed by the Chief Financial Officer of Seller to all such effects, with respect to financial matters, and from the Secretary of Seller to all such effects with respect to any other matters.

(b) Authorization. All action necessary to authorize the execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby shall have been duly and validly taken by the board of directors of Seller, and Seller shall have full power and right to sell the Assets and the Business on the terms provided herein.

(c) No Litigation. No action, suit or proceeding to restrain or prohibit the consummation of the transactions contemplated under this Agreement shall be pending or threatened.

(d) Administrative Consent Order. The State of New Jersey, Department of Environmental Protection shall have issued an Administrative Consent Order with respect to the transfer of the Assets, including the real property and facility located in Lodi, New Jersey, and the transfer of the Business, which Administrative Consent Order is not inconsistent with the terms hereof.

(e) Seller's Counsel's Opinion. <sup>Chief</sup> Buyer shall have received a written opinion of Seller's general Counsel, which opinion shall be dated as of the Closing Date to the effect that:

(i) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has corporate power to carry on the Business as it is then being conducted (including the power to own or lease the Assets), and Seller is duly qualified to do business and is in good standing in all jurisdictions set forth on Exhibit F hereto;

(ii) The Assets are free and clear of any and all recorded mortgages, liens, security agreements, pledges, charges and encumbrances of any nature whatsoever, and the Seller has good and marketable title to all of the Assets (except, with respect to real property, for existing utility, governmental and obvious public easements that have not materially affected the value of or the use of the Assets by Seller);

(iii) Except as otherwise disclosed in Exhibit J hereto, there is no litigation, proceeding, arbitral action or governmental investigation pending or threatened against Seller relating to the Business, or the Assets, or the transactions contemplated by this Agreement;

(iv) The execution, delivery and performance of this Agreement by Seller, including without limitation the sale and transfer of the Assets as provided herein, have been duly authorized and approved by all requisite corporate action by Seller and this Agreement and each of the instruments of conveyance and trans-

fer referred to in this Agreement have been duly executed and delivered by Seller in pursuance of such authorization and constitute valid and binding obligations of Seller in accordance with their respective terms, except as such enforcement may be limited by applicable bankruptcy, insolvency or similar laws affecting generally the enforcement of contractual rights and by applicable limitations on equitable remedies;

(v) Except as disclosed in this Agreement or any Exhibit hereto or any document delivered pursuant hereto, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby nor compliance by Seller with any of the provisions hereof (x) violate or conflict with, or result in a breach of any provisions of the Certificate of Incorporation or By-laws of Seller, or (y) constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in the creation of any lien, security interest, charge or encumbrance upon any of the Assets under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, agreement or other instrument or obligation of which such counsel has knowledge, to which Seller is a party, or by which Seller or any of the Assets may be bound or affected, except for such conflict, breach or default as to which requisite waivers or consents shall have been obtained by Seller by the Closing Date, or (z) violate any order, writ, injunction or decree applicable to Seller or any of the Assets;

(vi) No authorization or consent of any governmental or statutory authority is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated herein by Seller, except such consents from the State of New Jersey, Department of Environmental Protection as shall have been obtained prior to the Closing Date; and

(vii) The instruments of assignment and transfer delivered by Seller to Buyer at the Closing are valid in accordance with their terms and, effectively assign and transfer to Buyer all of Seller's right, title and interest in and to the Assets as of the Closing Date.

In rendering such opinion such counsel may rely, to the extent specified therein upon certificates as to matters of fact of officers of Seller, provided that such counsel shall state they believe that both Buyer and they are justified in relying upon such certificates.

(f) Cumulative Adjustments. The cumulative adjustments to the Purchase Price set forth herein shall not result in an adjusted Purchase Price in excess of  Dollars ().

(g) Access and Inspection Right. Commencing on the date hereof, Buyer and its agents shall have complete and unrestricted access to the Business and the right to inspect all the books and records of Seller relating to the Business and the Assets.

(h) Product Liability Insurance. Buyer shall have obtained a commitment from a reputable insurance carrier to provide Buyer with product liability insurance for at least one year with respect to the Business in an amount not less than One Million (\$1,000,000.00) Dollars.

#### 11. CONDITIONS TO SELLER'S OBLIGATIONS.

The obligation of Seller to consummate the sale of the Assets contemplated by this Agreement is subject to the satisfaction, on or before the Closing Date of the following conditions (unless waived by Seller in writing):

(a) All representations and warranties of Buyer shall be deemed to have been made again on and as of the Closing and shall then be true and correct and Buyer shall have performed all obligations and complied with all covenants required to be performed or to be complied with by it under this Agreement prior to the closing.

(b) Seller shall have received from Messrs. Halperin Shivitz Eisenberg Schneider & Greenawalt, Buyer's Counsel, a written opinion to the effect that:

(i) Buyer is a corporation duly organized and existing under the laws of the State of Delaware and has the power and authority to enter into and carry out this Agreement and the Promissory Note.

(ii) This Agreement and the Promissory Note have been duly authorized, executed and delivered by Buyer and each of such agreements is a valid and legal binding agreement of Buyer enforceable in accordance with its terms, except to the extent such enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of contractual rights generally and except to the extent of applicable limitations on equitable remedies.

(iii) No authorization or consent of any governmental or statutory authority, to counsel's knowledge, is required in connection with the execution, delivery and performance of this Agreement by Buyer.

In rendering such opinion, such counsel may rely upon certificates as to matters of fact of officers of Buyer, provided that such counsel shall state that they believe both Seller and they are justified in relying upon such certificates.

(c) Administrative Consent Order. The State of New Jersey, Department of Environmental Protection shall have issued an Administrative Consent Order with respect to the transfer of the Assets, including the real property and facility located in Lodi, New Jersey, and the transfer of the Business, which Administrative Consent Order is not inconsistent with the terms hereof.

**12. DOCUMENTS TO BE DELIVERED ON CLOSING DATE.**

(a) Seller's Documents. At the Closing, Seller shall deliver to Buyer the following:

(i) Duly executed assignments of all leases of real and personal property;

(ii) A duly executed bill of sale in the form of Exhibit D;

(iii) An assignment in form sufficient to convey title and recordable with the Patent and Trademark Office;

(iv) Such other bills of sale, deeds, assignments and transfer documents, in form satisfactory to Buyer's counsel, as are necessary to transfer, assign and convey all the Assets to Buyer;

(v) Certificate of the Seller that the representations and warranties of the Seller contained in this Agreement are true and correct in all material respects at and as of the Closing Date, except for representations and warranties specifically relating to a time or times other than the Closing Date, which shall be true and correct in all material respects at such time or times;

(vi) Certificates of the Secretary and Chief Financial Officer of the Seller to which reference is made in subparagraph 10(a);

(vii) Opinion of counsel to Seller to which reference is made in subparagraph 10(a); and



(viii) Receipt acknowledging payment of the sums provided for a subparagraph 1(b), as such have been adjusted in accordance with the terms hereof.

(b) Buyer's Documents. At the Closing, Buyer shall deliver to Seller the following:

(i) Cash or the certified or bank check of Seller in the amount set forth in paragraph 1(b)(iv), adjusted as set forth herein;

(ii) The Promissory Note of Buyer in the form attached hereto as Exhibit B;

(iii) The Real Estate Mortgage of Buyer in the form attached hereto as Exhibit C; and

(iv) Opinion of Buyer's counsel to which reference is made in subparagraph 11(b);

### 13. ADJUSTMENT OF PURCHASE PRICE.

The Purchase Price set forth in section 1(b) shall be adjusted as follows:

(i) the Purchase Price shall be reduced or increased, as the case may be, by the extent to which the Assumed Liabilities are less than or greater than, as the case may be, \$~~1,000,000~~;

(ii) the Purchase Price shall be reduced or increased, as the case may be, by the extent to which the inventory including reserves, set forth in the 1985 Financial Statement is less than or greater than, as the case may be, \$~~1,000,000~~; and

(iii) the Purchase Price shall be reduced or increased, as the case may be, by the extent to which the prepaid expenses set forth in the 1985 Financial Statement, is less than or greater than, as the case may be, \$~~1,000,000~~.

The adjustments set forth above shall be applied to the cash payable under section 1(b)(iv).

In the event that after Buyer and its advisors review the 1985 Financial Statement there are any unresolved issues as to the correct line-item values therein, then Buyer shall so advise Seller and a senior representative of Buyer and Seller shall meet

in order to resolve such issues. In the event that after such meeting, and good faith discussion of such issues, any issues remain unresolved then Seller's accountants and Buyer's accountants shall similarly meet in an effort to resolve such issues. Each party shall bear its own expenses and the expenses of its advisers and accountants in connection with such resolution of such issues. Notwithstanding anything to the contrary contained herein, the 1985 Financial Statement shall be deemed to be amended to reflect the line item values determined in accordance with the terms hereof, and such line item values shall be applicable for all purposes hereof.

**14. ALLOCATION OF RESPONSIBILITY FOR ENVIRONMENTAL  
CLEAN-UP OF LODI, NEW JERSEY FACILITY**

Seller represents that it shall use its best efforts to enter into an Administrative Consent Order (the "Administrative Consent Order") with the Department of Environmental Protection of the State of New Jersey which shall provide that Seller will undertake clean-up action of the Lodi, New Jersey site required by New Jersey laws as of the Closing Date, with the further understanding that the scope and extent of the clean-up action will be determined and undertaken after the closing and transfer of the real property Assets. To obtain said Administrative Consent Order, Seller shall post such performance bond as is required by the State of New Jersey, which amount is currently estimated to be \$~~10~~ million; provided, however, that Seller shall not be obligated to post a Bond in excess of \$~~10~~ million. Any documented costs of any environmental clean-up of the site shall be allocated as follows:

The first \$~~10~~ shall be borne by Buyer;

Over \$~~10~~ up to \$~~10~~ shall be borne equally between Seller and Buyer;

Over \$~~10~~ shall be borne entirely by Seller.

In the event that documented clean-up costs under the Administrative Consent Order exceed \$~~10~~ in the first year following the closing date, Buyer shall not be required to pay to Seller so much of the annual interest payment due on its secured note as equals the amount by which said clean-up costs exceed \$~~10~~; that amount will be added to the final principal payment due from Buyer to Seller at the end of five (5) years from the closing date. This same arrangement shall apply to clean-up costs during the second year from the closing date. Buyer and Seller agree to cooperate in complying with any requirements under the Administrative Consent Order, and each will fully advise the other

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of any communication, meetings or correspondence with the Department of Environmental Protection of the State of New Jersey, or other environmental authority. As part of its payment of the purchase price, Buyer is assuming a liability of \$~~XXXXXX~~ for environmental clean-up costs; this is set forth further in paragraph 1(b)(iii) hereof.

15. INTERIM ACCOUNTING PERIOD.

Commencing at the close of business on the Effective Date, Seller agrees to conduct the Business for the benefit of Buyer, and as otherwise provided herein, until the Closing Date. Forty-five (45) days after the Closing Date, or on such other date as mutually agreed upon by both parties (the "Final Accounting Date"), there shall be a final accounting.

On the Final Accounting Date there shall be a reconciliation and settlement of the net amount due to either party as a result of transactions by Seller conducted for the benefit of the buyer between the Effective Date and the Closing Date (the "Interim Accounting Period").

Seller shall be reimbursed for all actual disbursements, including outstanding payables for payroll, payroll taxes and related benefits, purchases of materials and services or other payments incurred in the ordinary course of the Business applicable to transactions during the Interim Accounting Period.

In order to effect such final accounting, all disbursements made by Seller in operation of the Business for payroll, taxes, material purchases and similar items will be recorded as chargeable to Buyer. All receivables generated after the Effective Date will be recorded as receivables of Buyer. Seller will continue to collect receivables during the Interim Accounting Period. Cash receipts for accounts receivable which relate to transactions on and prior to the Effective Date will be retained by Seller. All receipts for Accounts Receivable which relate to transactions on or after January 1, 1986 are recorded for Buyer. On the Final Accounting Date a balance due Buyer or due Seller, as the case may be, will be calculated by adding all receipts accrued to the Buyer during the Interim Accounting Period less all disbursements made by Seller on Buyer's behalf during such period. If a balance is due Seller from Buyer, such amount will be paid by Buyer to Seller on the Final Accounting Date. If a balance is due Buyer from Seller such amount shall be remitted by Seller to Buyer on a weekly basis as customer receipts become available to cover required cash remittances, but in no event later than sixty (60)

days after the Final Accounting Date. Buyer hereby agrees that in the event that Seller becomes obligated to pay state or federal income tax in respect of Seller's operation of the Business during the Interim Accounting Period, and such obligation becomes fixed not later than the expiration of the period during which Buyer may amend its state or federal income tax return, as the case may be, with respect to the Interim Accounting Period, Buyer shall indemnify and hold Seller harmless from such tax liability; provided, however, that Seller notifies Buyer promptly of any audit or inquiry which may give rise to such tax liability and affords Buyer the opportunity to contest such liability at Buyer's own expense.

In the event that Buyer and Seller cannot agree as to the appropriate payments to be made in respect of the Interim Accounting Period, Buyer and Seller shall use their best efforts to resolve such disagreement in accordance with the provisions of paragraph 13 hereof. The provisions of this paragraph 15 shall be deemed to be in furtherance of, and not in derogation of, the covenants and provisions of paragraph 5 hereof. In the event that the closing under this Agreement should fail to occur, the provisions of this paragraph 15 shall be deemed to be of no effect.

**16. ADDITIONAL WARRANTIES; SURVIVAL.**

All statements contained in any Exhibit hereto or in any certificate or instrument of conveyance delivered by or on behalf of Seller pursuant to this Agreement or in connection with the transactions contemplated hereby shall be deemed representations and warranties by Seller. All representations and warranties of Seller made in this Agreement or as provided herein shall survive the Closing Date and survive any investigation at any time made by or on behalf of Buyer but only to the extent provided in paragraph 17 hereof.

**17. INDEMNIFICATION OF BUYER.**

This paragraph 17 sets forth the respects in which Buyer shall be indemnified by Seller after the Closing Date on claims for indemnification, the obligations of Seller to Buyer after the Closing Date, and the remedies of the Buyer against the Seller after the Closing Date with respect to any misrepresentation or breach of warranty, covenant or agreement under this Agreement on the part of the Seller. Nothing contained herein shall be construed to limit Buyer's right to additional indemnifications from Seller pursuant to this Agreement.

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(a) Misrepresentation; Breaches. Seller shall indemnify Buyer and hold it harmless from, against and in respect of, and shall on demand reimburse the Buyer for: (i) all its losses, liabilities, damages, costs and expenses after the Closing Date, arising from or in connection with any misrepresentation or breach of warranty, covenant or agreement on the part of Seller under this Agreement, or in any certificate, document or instrument delivered to the Buyer; and (ii) any and all actions, suits, proceedings, elections, demands, assessments, judgments, costs and expenses, including without limitation, reasonable legal fees and expenses, incident to any of the foregoing or incurred in investigating or attempting to avoid same or to oppose the imposition thereof, or in enforcing this indemnity. Notwithstanding the foregoing the Seller shall have no liability under this paragraph (a) unless the aggregate amount of such liability exceeds \$20,000, but in no event shall the Seller have any liability for any claims for indemnity not made and arising within three (3) years after the Closing Date.

(b) Bulk Sales. Seller shall indemnify Buyer and hold it harmless from all claims of creditors or others based on this Agreement or the transaction contemplated hereby (including, but not limited to, claims predicated on the New Jersey Uniform Commercial Code - Bulk Transfers statute) and any and all losses, liabilities, damages, costs, expenses, fees and taxes, levied, imposed or incurred as a result thereof; excluding, however, the Assumed Liabilities.

(c) Taxes. Seller shall indemnify Buyer and hold it harmless from any and all sales, use, transaction, or other taxes that may be imposed as a result of the execution of this Agreement or the consummation of the transactions contemplated by this Agreement; provided, however, that with respect to sales tax Seller shall indemnify and hold Buyer harmless under this subparagraph only with respect to the initial \$30,000 of sales tax liability and with respect to fifty (50%) percent of any such sales tax liability in excess of such \$30,000 but less than \$40,000.

(d) Notice; Defense. If Buyer proposes to assert a right of indemnification under this paragraph 15 it shall, promptly after Buyer is apprised of any action or interference or receives any claim or notice of commencement of any suit or proceeding with respect to which the right to indemnification is proposed to be asserted, notify Seller thereof in writing, enclosing a copy (if in writing) of any such claim or notice and a concise description of the basis of the claim for indemnification. Seller shall have the sole right and obligation to defend any such claim with counsel of its choice at its own expense. Buyer shall have the right to

participate in the defense of such claim, suit or proceeding; in such event, Buyer shall have the right to employ counsel, but the fees and expenses of such counsel shall be borne by Buyer. In no event will Buyer be required, prior to making a claim against Seller or becoming entitled to recovery hereunder from Seller, to commence litigation or to take any other action (other than reasonable collection efforts in the ordinary course of business as to accounts receivable and reasonable efforts to file claims to obtain insurance recoveries) against any third party with respect to a matter for which Buyer may have a claim against Seller under this Agreement. The parties shall cooperate with each other in each defense hereunder.

18. EXPENSES.

Buyer shall pay its own expenses incident to this Agreement and the transactions contemplated hereby, including all fees of its counsel and accountants, whether or not such transactions shall be consummated. Seller shall pay its own expenses incident to this Agreement and the transactions contemplated hereby, including all fees of its counsel and accountants, whether or not such transactions shall be consummated.

19. BULK SALES.

Except as provided for in Section 17(b) hereof, the parties hereto, jointly and severally, waive compliance with the provisions of any applicable bulk sales laws, including provisions of the New Jersey Uniform Commercial Code.

20. NOTICES.

All notices or other communications between the parties shall be given in writing by registered or certified mail, return receipt requested, and addressed to the attention of each of the following persons:

- (a) If to Buyer:  
FOA Corporation  
William J. Reidy  
450 Franklin Avenue  
Wyckoff, New Jersey 07481

and

Halperin Shivitz Eisenberg  
Schneider & Greenawalt  
Attention: William S. Greenawalt  
11 East 44th Street  
New York, New York 10017

(b) If to Seller:

Hexcel Corporation  
650 California Street  
San Francisco, CA 94108  
Att: Mr. D. Thomas Divird

copy to:

Hexcel Corporation  
650 California Street  
San Francisco, CA 94108  
Att: John F. O'Flaherty, Esq.

21. FINDERS.

The parties agree that none of them shall be liable for any brokerage, finder's or similar fees or commissions incurred by any other party hereto in connection with the transactions contemplated by this Agreement. Each party to this Agreement represents and warrants to the other party that it has not dealt with and does not know of any person, firm or corporation asserting a brokerage, finder's or similar claim in connection with the making or negotiation of this Agreement or the transactions contemplated hereby.

22. PRESS RELEASE.

No party shall issue any press releases or public announcements of any of the transactions contemplated by this Agreement except as may be mutually agreed to in writing by both Seller and Buyer; provided, however, that Seller may issue such press releases or public announcements as in its reasonable judgment are required in order to comply with applicable law or the rules and regulations of the Securities and Exchange Commission or the New York Stock Exchange.

23. FURTHER INSTRUMENTS.

Each of the parties will, after the Closing Date, without cost or expense to the complying party, execute and deliver or cause to be executed and delivered to the requesting party such

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further instruments of transfer and conveyance and will take such other action as may be reasonably requested to more effectively consummate the transactions contemplated by this Agreement.

24. NO THIRD PARTY RIGHTS.

Except as otherwise provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person, firm or corporation, other than the parties hereto, any right or remedy under or by reason hereof.

25. MISCELLANEOUS.

This Agreement:

(a) Counterparts. May be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

(b) Entire Agreement. Supersedes all prior negotiations, and, together with all other documents, schedules, lists, exhibits, certificates and other documents referred to in this Agreement or required in connection with the transactions contemplated hereby, contains the entire understanding between the parties and may not be orally changed or modified.

(c) Binding Effect. Shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, personal representatives and assigns.

(d) Applicable Law. Shall be governed by the laws of the State of New Jersey applicable to contracts negotiated in and



to be performed in the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

WITNESS:

FOA CORPORATION

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

HEXCEL CORPORATION

*J. L. P. O'Leary*  
\_\_\_\_\_  
V.P. & Secretary

By: *A. J. Durand*  
\_\_\_\_\_  
V.P. Finance  
Date: *12/31/85*  
\_\_\_\_\_

to be performed in the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

WITNESS:

*William J. Brewster*

FOA CORPORATION

By: *[Signature]*

By: *[Signature]*

Date: December 31, 1985

WITNESS:

\_\_\_\_\_

HEXCEL CORPORATION .

By: \_\_\_\_\_

Date: \_\_\_\_\_

## INDEX TO EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
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